THE NEW-YORK TRIBUNE

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## THE TRIBUNE.

## The Boundary Treaty.

The Courier and Enquirer gives the following as the Beundary sections of the Treaty just negotiated by Mr. Webster and Lord Ashburton. and ratified by the Senate. How this can have been obtained we do not perceive, as the official promulgation is of course delayed until the Treaty shall be ratified in England.

A TREATY
To settle and define the Boundary between the Territories of the United States and the possessions of Her Britannic Majesty in North America, for the final suppression of the African Slave Trade. and for the giving up of Criminals, fugitives from justice in certain cases :

WHEREAS certain portions of the line of boundary between the United States of America and the British dominions in North America, described in the Second Article of the Treaty of Peace of 1783, have not yet been ascertained and determined, notwithstanding the repeate. attempts which have been heretofore made for that purpose: and whereas it is now thought to be for the interest of both parties that, avoiding further discussion of their respective rights, arising in this respect under the said Treaty, they should agree on a conventional line in said portions of the said boundary, such as may be convenient to both parties, with such equivalents and compensations as are deemed just and reasonable: And whereas, by the Treaty concluded at Ghent on the 24th day of December, 1814, between the United States and His Britannic Majesty, an article was agreed to and inserted of the following tenor, viz: "Art. 10. Whereas the traffic in Slaves is irreconcileable with the principles of humanity and justice: And whereas, both His Majesty and the United States, are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object:" And whereas, notwithstanding the laws which have at various times been passed by the two Governments, and the efforts made to suppress it, that criminal traffic is still prosecuted and carried on: And whereas the United States of America and Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, are determined that, so far as may be in their power, it shall be effectually abolished: And whereas it is found expedient, for the better administration of justice and the prevention of crime within the territories and jurisdiction of the two parties respectively, that persons committing the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up: The United States of America and Her Britannic Majesty, having resolved to treat on these several subjects, have for that purpose appointed their respective Plenipotentiaries to negotiate and conclude a Treaty; that is to say, the President of the United States has, on his part, furnished with full powers Diniel Webster, Secretary of State of the United States, and Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, has on her part appointed the Right Honorable Alexander Lerd Ashburton, a Peer of the said United Kingdom, a member of Her Majesty's most honorable Privy Council, and Her Majesty's Minister Plenipotentiary on a Special Mission to the United States; who, after a reciprocal communication of their respective full powers, have agreed to and signed the following Articles:

ARTICLE I It is hereby agreed and declared that the line of boundary shall be as follows:

Beginning at the Monument at the source of the River St. Croix, as designated and agreed to by the Commissioners under the 5th Article in the Treaty of 1794, between the Governments of the United States and Great Britain; thence, North, following the exploring line run and marked by the Surveyors of the two Governments in the years 1817 and 1818. under the 5th Article of the Treaty of Ghent, to its intersection with the River St. John and to the middle of the channel thereof: thence, up the middle of the main channel of said River St John, to the mouth of the River St. Francis; thence, up the middle of the channel of the said River St. Francis, and of the lakes through which it flows, to the outlet of the Lake Pohenagamook; thence, Southwesterly, is a straight line to a point on the North-West branch of the River St. John, which point shall be ten miles distant from the main branch of the St. John, in a straight line, and in the nearest direction; but if the said point shall be found to be less than seven miles from the nearest point, or summit, or crest of the highlands that divide those rivers which empty themselves into the River St. Lawrence from those which fall into the River St. John, to a point seven miles in a straight line from the said summit or crest; thence, in a straight line in a course about South eight degrees West to the point where the parallel of latitude of 46° 25' North intersects the South-West branch of the St. John; thence, Southerly by the said branch, to the source thereof in the highlands at the Metjarmette portage; thence, down along the said highlands which divide the waters which empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the head of Hall's Stream; thence, down the middle of said stream till the line thus run intersects the old line of boundary surveyed and marked by Valentine and Collins previously to the year 1774, as the 45th degree of North latitude, and which has been known and understood to be the line of actual division between the States of New-York and Verment on one side, and the British Province of Canada on the other; and, from said point of intersection, West along the said dividing line as heretofore known and understood, to the Iroquois, or St. Lawrence River. ART. II. It is moreover agreed, that, from the

place where the Joint Commissioners terminated their labors, under the sixth article of the Treaty of Ghent, to wit: At a point in the Neebrik channel, near Muddy lake, the line shall run into and along the ship channel, between St. Joseph and St. Tammany Islands, to the division of the channel at or near the head of St. Joseph's Island; thence, turning Eastwardly and Northwardly, around the lower end of St. George's or Sugar Island, and following the middle of the channel which divides St. George's from St. Joseph's Island; thence, up the East Neebrik channel, nearest to St George's Island, through the middle of Lake George; thence West of Jona's Island, into St. Mary's River, to a point in the middle of that river, about one mile above St. George's or Sugar Island, so as to appropriate and assign the said Island to the U. States; thence adopting the line traced on the maps by the Commissioners, through the river St. Mary and lake Superior, to a point North of He Royal in said lake, one hundred yards to the North and East of Ile Chapeau, which lastmentioned island lies near the Northeastern point of Ile Royal, where the line marked by the Commissioners terminates; and from the last mentioned point, Southwesterly, through the middle of the sound between Ile Royal and the Northwestern main-land, to the mouth of Pigeon river, and at the said river to, and through, the North and South Fowl lakes, to the lakes on the hight of Land, between lake Superior and the lake of the Woods; thence along the water communication to lake Saisa juinago, and through that Lake; thence to and through Cypress lake, Lac de Bois Blanc, Lac la Croix, Little Vermillion lake, and lake Namecan, and through the several smaller lakes, straits, or streams, connecting the lakes here mentioned, to that point in Lac la Pluie or Rainy lake, at the Chaudiere Falls, from which the Commis-

BY GREELEY & McELRATH. OFFICE NO. 30 ANN-STREET FOUR DOLLARS A YEAR.

WHOLF NO. 428.

VOL. II. NO. 116. NEW-YORK, WEDNESDAY MORNING. AUGUST 24. 1842.

sioners traced the line to the most Northwestern oint of the Lake of the Woods-thence along he said line to the said most Northwestern point, being in latitude 49° 23' 55" North, and in longitude 95° 14' 38" West from the Observatory, at Greenwich; thence, according to existing treaties. lue-South to its intersection with the 49th paralel of North latitude, and along that parallel to the Rocky Mountains. It being understood that all the water communications, and all the usual portages along the line from lake Superior to the Lake of the Woods; and also Grand Portage, from the shore of Lake Superior to the Pigeon river. as now actually used, shall be free and open to the use of the citizens and subjects of both countries.

ART. III. In order to promote the interests and encourage the industry of all the inhabitants of the Countries watered by the river St. John and its ributaries, whether living within the State of Maine or the Province of New-Brunswick, it is agreed that, where, by the provisions of the present Treaty, the river St. John is declared to be the Line of Boundary, the navigation of said river shall be free and open to both parties, and shall in no way be obstructed by either; that all the produce of the forest, in logs, lumber, timber, boards. staves, or shingles, or of agriculture not being manufactured, grown on any of those parts of the State of Maine watered by the river St. John, or by its tributaries, of which fact reasonable evidence shall, if required, be produced, shall have free access into and through the said river and its tributaries, having their source within the State of Maine, to and, from the scaport at the mouth of the said river St John, and to and round the Falls of said river, either by boats, rafts, or other convevance: that when within the Province of New-Brunswick, the said produce shall be dealt with as if it were the produce of said Province: that, in like manner, the inhabitants of the Territory of the Upper St. John determined by this Treaty to belong to her Britannic Majesty, shall have free access to and through the river for their produce, in those parts where the said river runs wholly brough the State of Maine, &c.

The remaining portion of this, with the followng sections, with the correspondence, I am unable now to give you in detail-perhaps to-morrow

may be able to send it all. The remainder of the Treaty provides for the ceeping up on our part a small naval force on the Coast of Africa for the suppression of the Slave Frade-but says nothing in regard to the Creole case; does not mention the right of searching vesels for Slaves; nor are the questions of Boundary

on the Pacific side named in the Treaty. Six months time is allowed for its ratification or rejection by Great Britain.

WANTED .-- A situation as House of a house, and to the care and education of children. An arrangement might be made with hor for the use of a superior toned rosewood Piano Forte. For farther particulars please make application at her residence, No. 459 Broadway, entrance in Grand-street, or address F. K. at this office.

W ANTED-An American or English Girl to do waiting and assist in house work. To one that is neat and understands her business this will be a home; moderate wages will be paid. No one but those who can give a good reterence need apply. Inquire between the hours of 10 and 12 o'clock, A. M. at No. 72 Franklin street. No Irisk need apply.

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WANTED-50 enterprising young men —Americans—to go an whaling voyages, in first class vessels. To young men of good habits the above is a very desirable opportunity. All clothing and other necessary articles furnished on the credit of the voyage. For further information apply to WM. LUCKEY & CO., Shipping Agents, 109 Sauth-sireet, up stairs.

13 VIED—50 enterprising young men

class vessels. To young men of good habits the above is a very desirable opportunity. All clothing and other necessary articles furnished to the control of the voyage.

WANTED—Ten or twelve active, infor the popular periodicals of the day. Men who have been engaged in teaching and literary pursuits will be preferred. No foreigness need apply. Undoubted testimonials of cha-

BRADBURY, SODEN & Co. 127 Nassan-st. N. Y., jel8 tf and 10 School-st. Boston accustomed to working in a store who can come with loubted recommendations, may apply between 8 and 10 lock A. M. to A. B. SANDS & CO.

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A. B. SANDS a Control of the Control of BOARD WANTED by two young gen-tlemen in a private family and pleasant location. A line addressed to W. H. at this Office will receive immedi-

BOARD, HOTEL—Brown's Mansion
House, 68 Duane street, near Breadway and the Park.
New-York.—This splendid hotel and boarding-house, late
'Manhattan,' has now the bar entirely removed; the irresponsible and dissolute rigidly excluded; all order and provision suited to the repose and comforts of a Christian
'Home;' and reduction unparalleled in charges—to wit, to
75 cents per day; \$1 to \$3 per week for lodgings; meals
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BOARDING.—Very desirable Rooms, just vacated, with good board, in a private family, can be obtained on reasonable terms, by applying at No 100 Hudson-street, near St. John's Park. THE WELL KNOWN LADY of intormation, Mrs. WILUIS, has removed from 99 Alleur street to 265 Elizabeth-street, a few doors this side Bleecker

\$20.000 TO LOAN, on Bond and Mortgage on real estate in this city, in sums to suit applicants. Also \$1500 or \$1700 wanted on a farm in Westchester county, 21 miles from this city, at 7 per

ent. Apply personally or by letter, post paid, to au23 3t. F. MARTIN, 120 Nassau-st. MISS PRENTISS (who has been for

the last ten years engaged as a teacher in Miss McClenachan's School) will, on the 12th September, open a School for Young I adies at No. 34 Hammond street. Her terms of tnition, &c. may be obtained at her residence, No. 26 Hammond street, where, on the afternoon of any day, she will be happy to see those who may wish to confer with ber upon the subject.

NAPP'S Cheap Fishing-Tackle and Gna Store, 50 Honston street, between Cannon and NAPP'S Cheap Fishing-Tackle and Gna Store, 50 Houston street, between Cannon and Lewis street, near the Williamsburgh Ferry. Manufacturer and dealer in jointed poies, snells, books, lines, floats, siakers, leaders, &c., 30 per cent, less than elsewhere. Just received, a superior lot of Reed Poles, fresh cut, by the single one or by the hundred, cheap. Guns, pistols, and fishing apparatus repaired, altered or made at reduced prices.—Powder, bail, and shot. On hand, several bamboo poles, 4 joints, hollow butt, only \$4 each.

TOHN L. GOURGAS, for many years of the Bazaar, corner of Broadway and Courtlandt-st. having lately fitted up at 10, 2 John-street, near the corner of Broadway, a small, neat establishment of the kind, with general assortment of very choice French. English Corn of Broadway, a small, neat establishment of the kind, with a general assortment of very choice French. English, German and American Fancy Goods and Perfumery, would be happy to receive, as opportunity may offer, a friendly call tool his former patrons, as also from the public in general

CLAZED HARDWARE PAPER.—
36 by 40 inches, 100 reams; 24 by 54 do., 100 reams;
20 by 30 do., 50 reams. Fine Hanging Paper, 10,000 lbs.,
20 inches wide, a superior article. Green Hanging Paper,
6,000 lbs., 20, 31, 33, 34 and 35 inches wide. 200 gross Bonnet Boards, blue and white. 40,000 lbs. Trunk Boards.
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tke shortest notice, and for sale by au22 tf GAUNT & DERRICKSON, 159 South-st. THE Self-Instructor and Journal of the Universal Lyceum, by Josiah Holbrook, is published monthly at the Exchange Lyceum, 348 Broadway, at 50 cents a year, paid in advance. A liberal discount will be made to agents who buy by the quantity. Agents of penny papers will find it a profitable work. For sale at Axford's news room, 168 Bowery.

EECHES! Leeches!! Leeches!!! 10,000 very fine, healthy. German and Swedish Leeches, just received and for sale very reasonable, whole-sale and retail, or carefully applied, by WILLIAM WATSON, Chemist and Pharmaceutist, Apothecaries' Hall, SS Catherine jy15Sm

WATER POWER TO LET—From one to fifty horse power, to let, at West Farms Saw Mill, II miles from the city. It is accessible by water, and has plenty of water in the dryest season. Inquire at the Mill or of JOHN COPCUTT, 348 Washington aul5 tf

CLOTHING, 98 Chatham street.—Per sons in want of good Clothing and wishing to save a little these hard times, would do well to call at WILLIAM DOLSEN'S new Store, No. 36 Chatham street, and examine his stock of ready made Clothing, before purchasing elsewhere as he is well convinced that they will not dispute the price.

The Book of Religions; comprising the Views. Creeds,
Sestiments or Opinions, of all the Principal R-ligious
Sects in the World, Particularly of all Christian Desominations in Europe and America: to which is added
Church and Missionary Statistics, together with Biographical Sketch's: By John Hayward, Author of the
New-England Gazetteer, &C. &c. (1 vol. 12mo. pp. 432.)
Dayton & Newman, 199 Broadway.

We do not see cause to admire the arrangement r proportion of this work. It contains much ragmentary truth, but manifests little philosophic ecquaintance with the subjects it treats of, and an imperfect acquaintance with some of its subdi-Restorationists, p. 93, it asserts that "In Gerdox have espoused this doctrine," (that is, ulsimate the Orthodox, or the most eminent of the Orthodox, or perhaps most of the Orthodox, it might Re torationists and Universalists is drawn with equal carelessness—the account under one head essentially differing from that under the other .-Still, the book will be read with profit and instruction by those in search of knowledge on the subject t treats. It is beautifully printed.

Lessons on Shells, as given in a Pestalozzian School, by C. Mayo, Esq., Author of 'Lessons on Objects.' Illustrated with numerous Plates drawn from Nature. Third Edition, with Notes by I. Cozzens, Librarian of the N. Y. Lyceum of Natural History. (I vol. 18 mo.) C. J. Fulson, No. 40 Fulton street.

This is a small volume of 218 pages containing all that need be taught to children on the subject of which it treats.

## Case of Madame Restell. To the Public and the Press:

It will be recollected that, about fifteen months since, the indersigned was the object of much newspaper vituperaion and abuse; every variety of opprobious invective the enguage afforded, was brought into requisition by which stigmatize the atrocious "woman." No epithet was onsidered too gross, too vile, to express the holy horror enertained by the truly pure and purely virtuous writers of he newspaper anathemas. Had the undersigned been conficted of the most foul and atrocious crime, strenger or nore bitter terms than those already lavished upon her, would have been wanting-the vocabulary being in this paricular, bankrupt.

A reflecting and impartial mind would naturally inquire he cause of all this malediction. Was it that the object of was tried and convicted, on proper and legal testimony some unheard of and most horrid atrocity!-Of murder, f manslaughter, of arson, or of some other beinous felony No, not so. Worse than all this. She was charged with the commission of a misdemeanor ! It was this charge, unsusained (as the Supreme Court declare) by a particle of legal estimony, which caused this mighty newspaper volcano to urst upon her devoted head.

An exparte affidavit was drawn up by one of the Police cierks, embellished with the horrid, revolting, and disgust-ing. This affidavit (which, be it remembered, was all there was to sustain the charge upon trial) was seized with eager eal and greedy avidity, and published, far and near, long before trial, accompanied with such virtuous outpourings, as would lead one to suppose the writers to be either the veriest saints or the veriest hypocrites in Christendom. Long before trial it was settled that the accused was guilty. Every person read one or more of the public journals, each of which deemed it necessary or polite to say something about the 'woman,' and thus lay claim to a proportion of morality; since this was an opportunity to gain it cheaply, supposing doubtless, that he who prates loudest and longest against "iniquity," &c. will be sure to be considered excessively virtuous.

After public opinion was thus effectually poisoned, it is entier reasonable nor probable to expect that the minds of those individuals composing the Court before whom the accused was yet to have a hearing, could be in a condition for that calm, cool, and dispassionate adjudication, without which, that intended to be safeguard and anchor of our civil institutions-trial by jury-is an idle ceremony, a mockery, a deception. Judges are but men-some of them with minds not the strongest, or most clear, very often with hankerings after popular favor-who will, in trying emergencies, hesitate between their duty as impartial administrators of the law, and the possible personal consequences of displeasing a supposed "public opinion."

I do not wish here to intimate that the Court of Sessions

acted from other than correct motives, notwithstanding that t seems a "remarkably singular coincidence" that throughout the whole of their proceedings against me, in not one single particular, (so says the Supreme Court.) did they act in accordance with the plainest, simplest, and best established and most fundamental principles of common law, statute, or precedent; but, on the contrary, in every instance, doubtless unintentionally, violated the clearest and dearest rights of every citizen. This is certainly singular; extremely so. But so it is nevertheless. I intend merely to suggest the gross impropriety and flagrant injustice of the public press; thus, in effect, destroying the glorious privilege of a fair, unbiased, and impartial trial by jury contemplated by the Constitution, as guaranteed to the veriest wretch, though he should have the sins of the world to answer for. How can this be attained, if, on the first binsh of a complaint, on an ex parte affidavit, however false, however unfounded, or however abandoned and wicked the party by whom made, a simultaneous and savage yell from the press astounds the public ear; the matter is seized hold of, exaggerated, perverted, misrepresented, magnified; the normity of the supposed offence is freely and unreservedly commented upon to exhaustion, as though the party, as yet only accused, and whose innocence or guilt is yet to be tested, were actually and beyond all peraduenture, guilty?

But this is not all. This might, perhaps, be tolerated, if, on finding themselves in the wrong or misled or deceived they had the manly honesty to acknowledge themselves premature in their surmises, and forthwith correct, with the utmost publicity any error of judgement or of fact into which they may have fallen. But no; not even this partial act of common justice is scarcely ever rendered. And I will venture to affirm that not one press in ten, loud-mouthed in my abuse, will even lisp that the Supreme Court have decided that the evidence upon which a conviction was obtained against Madame Restell, was illegal, unauthorized, and inadmissible. No. I expect it not. I respectfully submit it to the press whether such a course is not repugnant and dangerous " to the liberty of the citizen," certainly not less to be prized than the "liberty of

I take this opportunity to set the public right in relation to the matter preferred against me, by presenting to their notice such facts as will enable them to judge how much credence is to be given to the affidavit of the miserable, wicked, and abandoned woman, who affixed her signa

It will be recollected that in the affidavit, taken in March, 1841, she states that she called upon me, two and a half years befere, viz: in 1839. That on that occasion she gave me a pledge-ticket, consisting of some articles enumerated. But on the trial it was discovered that she bad made a previous affidavit, a year before, which was produced in Court, swearing in that affidavit that she had lost that self-same ticket, consisting of the same enumeration, by which oath she succeeded it appeared in obtaining the articles pledged. Here, then, she must have sworn falsely either in the one affidavit or in the other. Either she swore false in stating that she lost the ticket, or else she swore falsely in alleging that she gave it to me. It did not appear in evidence upon the trial that I ever had the pledge-ticket, except by her affidavit, which was set aside by her previous affidavit, taken a year before, in which she swears as having lost it. Had this woman testified on the stand in open Court, or where she would have been subjected to cross-examination, she would have convicted herself of perjury. Such was the character of the testimony upon which a conviction was obtained, and it would have been surprizing indeed if the Supreme Court would permit such proceedings to have passed without administering a quiet, but severe and well-merited rebuke.

Dr. Marvin, her family physician, testified that "she was woman of weak intellect, silly, and easily influenced."-This being so, it was not to be wondered at that such a woman, in the hands of her notoriously abandoned and desperate husband, should have been prevailed upon to testify in a manner which would have subjected her to the penalties of the law. I wish the public to bear in mind that this W. W. Purdy, het husband, testified under oath that he never made overtures to me, either personally or otherwise, to

streets, where Pardy left witness, promising to meet him at a barber's stop at or near the corner of Courtlandt-street.— Witness went into the house of Madame Restell and saw :

woman." The immateriality of this Purdy's testimony upon the main question at issue was all that saved him from as indictment for perjury and attempt to extort. Such was the prosecution and such the testimony; and I refer with pride and pleasure to the decision of the Supreme Court as a

I have, in conclusion, but one other point to broach upon-The beautiful and high-wrought specimen of a literary composition, drawn up by one of the Cierks of the Police, before alluded to, contained, among other things, intended to visions. Occasionally, a carelessness of statement | shock alike the moral sense and decency of the community, is betrayed. For instance, in speaking of the the allegation that a "man," hoodwinked, muffled up, and wrapped up-doubtless, a very demon-was in attendance on that special occasion. The composition, as a production many, a country which, for several centuries, has intended to be startingly horrid, would have been incomtaken the lead in all theological reforms, the ortho- plete without some adjunct equally preposterous, ridiculous and abserd. The only drawback upon it being that it is Universal Salvation.) Now if he had said some of do I engage a "man" or physician, for the simple and allabundant reason that, whatever I undertake, I feel myself competent, as well by study, experience and practice, to carry through properly; and, so far from requiring a physihave been true, but the statement as made gives | cian in my practice it is not unusual for me to be called for an erroneous impression. His distinction between in preference to a "doctor" in confinements, where a proper delicacy forbids the presence of a male practitioner, and also in such other cases in which it is more fitting and proper, and more in consonance with our ideas of propriety, hat a lady, provided always she is skilful, should attend in preference to a gentleman.

It will be perceived that every one of the exceptions taken by Mr. Jordan, on account of illegality, are sustained by the Supreme Court. A sufficient commentary upon that gentleman's legal acquirements, to whom I return my sincere thanks for the faithful, able and fearless manner in which be conducted himself throughout, regardless alike of the

frowrs and caresses of all. MADAME RESTELL, Female Physician,

148 Greenwich-street, N. Y.

Supreme Court-The People v. Restell.

Supreme Court—The People v. Restell.

OPINION OF THE COURT.

Bronson J. The depositions of Mrs. Purdy, who had died before the trial, were offered in evidence upon two grounds—Ist, as depositions taken de bene esse, in the Court of General Sessiens; and, 2d, as examinations before Mr. Merritt, the committing magistrate. There is a difficulty in the outset in allowing them to be read as depositions taken in the General Sessions; for at the time they were taken there was no suit or preceding against the defendant pending in that Court. The defendant had just before been committed to prison by a magistrate on a criminal charge; but no indictment had been found, and whether she would be indicted, if at all, in the Sessions or the Oyer and Terminer, was a question about which nothing could then be known. I do not see how the Sessions could acquire jurisdiction of the matter except by indictment tound in that Court, or in the Oyer and Terminer and transmitted to the Sessions for trial. If the Court had no jurisdiction, the depositions are the Oyer and Terminer and transmitted to the Sessions for trial. If the Court had no jurisdiction, the depositions are extra-judicial, and consequently void. But as this difficulty was not mentioned at the bar, there may be some legal provision on the subject which I have overlooked, or there may have been an understanding between the coursel that the objection should not be made. It is proper, therefore, to consider the case upon the broad ground discussed at the bar.

bar.

Can the public prosecutor have depositions taken de bane esse in criminal cases, and read them in evidence without the consent of the defendant? I think he cannot. The general rule certainly is, that the witnesses must appear in Court and be confronted with the accused party. On trials for homicide the dying declarations of the person murdered may be given in evidence against the defendant. This is, I think, the only exception to the general rule which has been pressured and a very large divens some statute.

may be given in evidence against the defendant. This is, I think, the only exception to the general rule which has been mentioned, except such as are based upon some statute law. A practice sprung up in this State at an early day, of taking depositions de bene asse in civil suits, which were afterward read in evidence on proof of the death or absence of the witness. [Mumford v. Church, I John Cas. 147; Sandford v. Burreil, Antk. N. P. 184; Jackson v. Kent. Cow. 59; Wait v. Whitney, id. 69; Packard v. Hill, id. 489] This practice has since been sanctioned by the Legislature [2 R. S. 391, Art. I.] But this statute does not, nor does the prior practice extend to criminal cases.

We are referred to another statute, which provides that "the proceedings prescribed by law in civil cases, in respect to the impanyeling of juries, the keeping them together, and the manner of rendering their verdict, shall be had upon trials of indictment; and the provisions of law in civil cases relative to compelling the attendance and testimony of witnesses, their examination, the administration of oaths and alfirmations, and proceedings as for contempts to enforce the remedies and protect the rights of parties, shall extend to trials and other proceedings on indictments, so far as they may be in their nature applicable thereto, subject to the provisions contained in any statute." [2 R. S. 735, sec. 14.] It was not be object of this section to give new remedies in criminal cases, but to direct the mode in which existing remedies should thereafter be applied. "The provisions of law in civil cases," in relation to the matters particularly specified, are extended to like proceedings on indictments; but it is only "so far as they may be in their nature applispecified, are extended to like proceedings on indictments specified, are extended to like proceedings on indictments; but it is only "so far as they may be in their nature applicable thereto." Much stress has been laid upon the words "their examination," as applied to witnesses. But those words must be restricted to cases where the examination was already provided for by law; and there is ample scope for their operation. They apply where the witness is produced in court, when he is examined on commission, and when examined conditionally at the instance of the defendant. [2 R. S. 731, sec. 73, 75.] The Legislature did not a tend by this general provision in relation to the forms and mode of proceeding in criminal cases to introduce a new rule into the law of evidence. This is the more eviden from the fact that special provision had already been made in the same chapter for the examination of witnesses out of court. After issue joined upon the indictment, the detendant may have a commission to examine winesses residing out of the State, and the prosecuting officer may join in the commission and name witnesses on the part of the people. [2 R. S. 731, sec. 73.] After having thus especially provided for particular cases, it is impossible to suppose that the Legislature, in the general provision which follows on page 735, sec. 14, intended to cover an entirely new class of cases, and provide for the examination of witnesses de bone case on the part of the people.

the part of the people.

There is a class of cases where depositions taken out of Court, and without the consent of the defendant may read in evidence against him. The Statutes I and 2 Pailip read in evidence against him. The Statutes I and 2 Philip and Mary a, 13, and 2 and 3 Philip and Mary c, 10, provine, that the magistrate shall take the examination of the prisoner, and the information of them that bring him, put the same in writing, and certify it to the next good delivery within his commission. We have a similar statute, 2 R. S. 708 213—27. It is generally agreed that depositions taken in pursuance of these statutes may, when the witness is dead, and in some other cases, be read in evidence on the trial. The statutes do not provide that the depositions shall be evidence; but they are admitted on the ground that they have been taken in the course of a judicial proceeding expressly authorized by law, when the defendant was present and had the right of cross-examination. It is some times said in the looks that the deposition is admitted because it is not extra-judicial. But that is only a part of the true reason, and is calculated to mislead.

reason, and is calculated to mislead.

Going upon that reason, and is calculated to mislead.

Going upon that reason alone, the original complaint on oath before the magistrate on applying for the warrant would be admissible evidence against the defendant atthough he had not then been brought into court. That is a judicial proceeding; and yet I am not aware that the original complaint was ever received in evidence against the defendant. The contrary was expressly adjudged in the State vs. Hall, 2 Hill's Law Rep. (So. Car.) 609. The oe position must account be taken in a indicial proceeding, but position must actorily be taken in a judicial proceeding, but it must be taken when the defendant was present and had the opportunity to cross-examine the witness; otherwise it

will not be received.

It is said that depositions taken by the Coroner on holding an inquest, are evidence, although the defendant was not present when they were taken. This doctrine has been gravely questioned, and I amstrongly inclined to the opinion that it cannot be maintained. The great principle that the accuser and the accused must be brought tace to face, and that the latter shall have the opportunity to cross examine, can never be departed from with safety. Neither life nor liberty should ever be put in peril by testimony to exparte denositions.

depositions.

It is better that the guilty should sometimes go free, than that the innocest should be subjected to such an ordeal. It is not, however, necessary at this time to pass upon the admissibility of depositions taken before the Coroner in the absence of the accused, and I will therefore only mention some of the books where the right to give such evidence has been strongly questioned. 2 Stark Iv, 489, 495, Ed. of '26; 2 Russ on Cr. 561; Roscoe Cr Iv. 53-4; The State v. Hill, 2 Hill's Law Rep. [So Cac.] 607, 619; Cow. and Hill's notes to Phil. Ed. 940 note 677. If such depositions are admissible, it proves nothing against the defendant, for the Coroner is authorised by statute to examine the defendant and ble, it proves nothing against the defendant, for the Coroner is authorised by statute to examine the defendant and to return the testimony of all witnesses examined before the Jury. 2 R. S. 742, Art I. The depositions are not, therefore, extra-judicial. But there is no statute which authorises the Court in which an indictment is pending to take depositions without the consent of the defendant. The authority of the Court of General Sessions to take these depositions, if it exist at all, must therefore be found in the common law. The common law has not authorised any such proceeding in criminal cases. The statutes of Philip and Mary only provide for the taking of depositions in cases of felony, and it was long since settled that depositions taken by the magistrate in cases of misdemeanor are not admissible. Rev. v. Baine. 1 Salk, 281: 1 Ld. Rayer, 780, 5 Frond magistrate is cases of misdemeanor are not admissi-ex. v. Baine, 1 Salk. 231; 1 Ld. Raym. 729; 5 wood. ble: Rex. v. Baine, 1 Salk. 231; 1 Ld. Raym. 729; 5 Wood. 183; Comb 358 353; Carth 405 S. C. This case seems to have been very carefully considered. The justices of the K. B. sent one of their number to the justices of the Common Pleas to learn their opinion, and all the Judges of both Courts agreed that the deposition could not be received. Carthew only mentions the other questions which arose in the case, and the report in Modern states that the deposition was rejected because the defendant was not present, and so had lost the benefit of a cross-examination. But there can be no doubt that the other point was also decided, and the case must therefore be regarded as an adjudication by the two Courts that there is no authority at the common law for taking depositions ont of Court in criminal. dication by the two Courts that there is no authority at the common law for taking depositions out of Court in criminal cases. In the case of Thatcher and Waller, Sir T. Jones 53, the defendants were footmen to Lord Cornwallis and were charged that, with him, they had murdered one Robert Clerk. They were acquitted for want of evidence, and it was then moved by the Chief Justice that the footmen "should be examined before one of the Judges for the prosecution of their testimony against the other offenders: this was not assented to by the other Judges, who said that they had no authority in the case other than as Justices of the Peace." If the Court of K. B. in England cannot order the taking of depositions before one of the Judges in criminal cases, it is quite clear that the N. Y. General Sessions cannot order the examination of a witness before the Recorder. In the King v. Morphew, 2 M. and S. 802, the Court made it a condition in putting off the trial on the application of the defendant that he should consent to the examination upon interrogatories of a material witness for the Crowa And after indictment found, the defendant may also ex-TWO SAIL BOATS FOR SALE—
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who was about to leave the country. And netwithstanding the defendant's counsel, the Attorney General, Sir William Garrow, doubted whether the deposition could be read to

pro-cutter must produce his witnesses on the trief; but the defendant was sor etimes aided by putting off the trial until the profile pro-cuttor would concert to an examination out or Court: Mostyn v Fabrigas; Cowp 174; 1 Cht. C. L. 6.2. The statute has now given the defendant a commission for witnesses out of the State, and allowed his to examinate the commission for witnesses out of the State, and allowed his to examinate the control of the state of the control of the state of th aming other witnesses conditionally, as in civil cases; but these privileges are confined to the defendant 2 R S. 731 see. 73, 75. These provisions show very satisfactority that the Legislature thought there was no warrant for examining witnesses out of Court in craminal cases, and that the

ght to do so ought not to be given to the prosecuting There is a case of Matthews v. Post [Comb 65] which, There is a case of Matthews v. Post [Comb 63] which, after deading in three lines that the visitation books kept by the heralds are good evidence, has four consluding lines as follows: "The witnesses may be examined before a ludg-by leave of the court, as well in criminal causes as in civil, where sufficient reason appears to the court, a going to sea &c., and then the other side may cross-examine them." Mr. Vinec, with his usual in austry, has found a place for this dictum in his great abridgement; but that has added nothing to its force. [Vin Ab. Evidence, Ab. 32 pl. 7.] As that was a civi suit, it is not very probable that the court made any such remark; but if they did there is no adjudication or practice to support it.

The court of general sessions acted without authority is ordering the examination of Mrs Purdy, and the depositions taken before the Recorder were therefore extra-judicial and void.

Told.

II. It remains to consider these depositions as they were taken by Mr. Merritt, the committing Magistrate. Our statute is not, like those of Philip and Mary, coatined to cases of felow, but extends to every criminal offence; and although the defendant was only charged with a misdemeanor, the Justice had authority and it was his duty to examine the convisionant and the witnesses produced in examine the complainant and the witnesses produced in support of the prosecution [2 R. S. 706, § 2, 13.] If the depositions were taken pursuant to law, and have since suffered no decriment, they were properly admitted in evidence on the trial—the witness being dead. Were they taken pursuant to law! It is settled, upon the construction ken pursuant to law? It is settled, upon the construction of the statutes of Philip and Mary, that the defendant must be present at the examination of the witnesses against him; and one statute expressly provides that the examination shall be had "in the presence of the prisoner," [§ 13] and if desired his counsel may also be present, [§ 14.] The Legislature has thus carefully provised that the defendant shall have the opportunity to cross-examine, and if that right is not enjoyed the deposition cannot be read in evidence against him on the trial. [The King v. Paine, 5 Med. 163; Comb. 358, S. C.; Woodcock's ease, 1 Leach, 500; Dingler's case, 2 id. 561; King v. Callaghan, 1 MacNally Ev. 385; Rex v. Forbes, 1 Holt N. P. 537, note; The State v. Hill, 2 Hill Law Rep. (S. Car.) 607; 2 Stark Ev. 488-92; 2 Hawk (by Carwood) 594, § 24; 2 Russ on Cr. 660; 1 Phil. Ev. 569, 372, ed. 67'3-1; Roscoc Cr. Ev. 50-4; Bull N. P. 241-2; 1 Chit. Cr. L. 77, 79; Cow. and Hill's notes to Phil. ev. 938, note 369; The King v. Crowther 1 T. R. 125 ] The answers of the witness should be on oath; he should be first sworn and then examined, instead of taking the examination first and then examined instead of taking the examination first and then examined in the parameters had be the truth of the statement. [The and then examined, instead of taking the examination first and then swearing him to the truth of the statement. [The and then swearing him to the truth of the statement. [The King v. Kiddy, 4 D. & R. 734.] and the deposition should be taken as nearly as possible in the words used by the witness. [I Phil. Ev. 469.] When the direct examination is closed, the defendant should be allowed to cross-examine at large, and the answers should be carefully set down by the Magistrate. In short the deposition should be so taken that the defendant will lose as little as the nature of the case will permit by reading the deposition on the trial instead of having the oral examination of the witness before the jury.

in Rex. vs. Forbes, 1 Holt, N. P. Rep. 597, note, the pris oner was not present until a part of the deposition had been prepared, when he was introduced and heard the remain-der of the examination; and when it was concluded, the prepared, when he was introduced and heard the remainder of the examination; and when it was conclided, the whole deposition was read over to the prisoner. Chambre J. rejected that part of the deposition which was prepared in the defeadant's absence. He said "the intention he statute of Philip and Mary is sufficiently plain. It is that the prisoner shall be present while the witness actually delivers his testimony, so that he may know the precise words he uses, and observe throughout the manner and demeanw with which he gives his testimony." This was in 1814 Rex vs. Smith, I Holt N. P. Rep. 614, and 2 Stark Rep. 208, S. C. was tried in 1817, and afterwards came before the twelve Judges, and is reported in Russ vs. Ryan, Cr. Cas. 339, where the facts are more fully stated. The oath was administered to the witness before any part of his evidence was reduced to willing. The prisoner was not present when the examination commenced, but was brought into the room before the three last lines of the deposition were taken down. He was then informed that the magistrates were taking the examination of the witness, and was desired to attend. The oath was again administered to the witness in the presence of the prisoner, and the whole of what had been previously written down from the month of the witness, was, in his presence, read once very distinctly and lowly. After this was done the witness was asked, in the presence of the prisoner, whether what had been written was true, and what he meant to say; and the witness answered that It was perfectly correct. The magistrates then proceeded to examine the witness farther; and after the three last lines were written, the prisoner was asked whether he chose to put any questions. The deposition was then signed by the witness and certified by the magistrates in the presence of the prisoner. Richards C. B., before whom the defendant was tried, was of opinion that the evidence was admissible, "since the deceased had been re-sworn in the defendant was tried, was of opinion that the ev

was admissing, and the prisoner, and had repeated what the presence of the prisoner therefore had an opportunity of cress-examining him." Ten of the eleven Judges who afterwards met to consider the case, were of opinion was properly received. About J. who afterwards met to consider the case, were of opinion that the deposition was properly received. Abbott J. though otherwise. I have been thus particular in stating this case, because it has been supposed to depart essentially from the dectrine lard down in Rex. vs. Forbes; but that is a nistake. In Rex. vs. Forbes it did not appear that the witners had been re-swora before the deposition was read once in the presence of the prisoner. Mr. Chilty (I Cr. S. 20. says, if the original information and evidence taken before the warrant was based, contain a complete case, it is the practice, after re-swearing the accuser and witnesses, to read over their former depositions in their presence and read over their former depositions in their presence and that of the prisoner, and to state to the latter that he is at liberty to ask the prosecutor and witnesses any question-r-specting the charge against him. This practice may, perhaps, he tolerated, though it clearly is not the most pro-

In this case the first and principal deposition was origin

ally prepared and sworn in the defenuent's absence, and could not therefore be used on the trial, usless the difficulty was obviated or what took place after the arrest. And here there are several objections. Although the defendant consented to go with the Justice to the house of Mrs. Purdy without waiting for the return of her husband with counsel,

without waiting for the return of her husband with counsel, she gave the consent on being told by the Justice that the only object in going was to have the defendant identified by the witness. When they got to the house, the Justice not only prepared an adiabit identifying the defendant, but he proceeded to reswear the witness to the original deposition, and did what, as is now said, will make that paper good evidence against the defendant. Although noth ug wrong was intended, I think this was not a proper course of proceeding. The husband had gone after counsel for the very purpose of having assistance on the examination, and if the defendant had been made to understand how much was to go done on this vest to Mr. Purity, it is highly probable that was intended, I think tals was not a prope solice to the very purpose of having as istance on the examination, and if the defendant had been an-de to understand how much was to the done on this visit to Mr. Purity, it is highly probable that she would have declined going there until sufficient time had been allowed for the return of her husband. Therwas no occasion for urging the woman away with so much maste after she had desired to have counsel, and when the return of her husband might be expected within fitteen or twenty ministes. The witness, so lar as appears, was not then dangerously ill, and she did not die until the lapse of more than a month from that time. The language of the statute is, "if desired by the person arrested, his counsel may be present during the examination." 2 R. S. 703, 214. A reasonable time after the arrest should be allowed for the employ ment of counsel, and I think the Justice misjudged of his duty in proceeding to an examination before a reasonable time had elapsed for the return of the husband.

But what was this supposed examination of the witness? The Justice did not pursue the course which was adopted in Rex vs. Smith—the case on which the District Attorney relies. In that case the magistrates in the first place restore the witness in the presence of the prisoner, and then very distinctly and slowly read over so much of the deposition as had been previously written. The witness was then as aed whether what had been written was true, and what he meant to say; and he answered, that it was perfectly correct. The magistrates then proceeded and completed the denosition. There was an examination of the witness so oath and in the presence of the prisoner, and then the direct examination was through the prisoner was invited to cross-examise. How was it here? The Justice without swearing the witness to answer questions touching the complaint, read over the original affidavits, then prepared another and read that; and then swore the witness to both depositions in the gross. After all

been given before any question was put by Madame Restell, as miness considered, and was already in the affidavit."

It must be recollected that this was the first time that the witness had been confronted with the accused, and if the witness had answered the same question before, it was when she did not stand face to face with the defendant. The statute provides that the magistrate shall proceed "to examine the complainant and the witnesses produced in support of the presenting on each in the same of the present of the pre amine the complainant and the witnesses produced in support of the prosecution on oath, in the presence of the prisoner, in regard to the offence charged, and in regard to any
other matters connected with such charge, which such magistrate may deem pertin-ut." (2 R. S. 703, 413.) The evidence given by the several witnesses examined shall be reduced to writing by the magistrate, or under his direction,
and shall be signed by the witnesses respectively." (f19)
I see nothing in these provisions to warrant the magistrate
in refusing to take down the amswers to pertinent questions
put upon the cross examination. If the same questions put
more than once and receives a uniform answer, one insertion in the deposition will be enough; but I see no reason
why the answer should be rejected altogether.

When the examination is produced and the magistrate
swears that it was taken in pursuance of the statute, and
nothing appears to the contrary, it may be presumed that

It was thought important on the trial to prove that there was a subsequent offer by the magistrate to examine the witnesses for the People in presence of the "ciendant and her counsel, and to allow a cross-examination. But this could not aid the defective depositions which had been taken ten days before the offer was made. If it was not then too late, the Justice should have gone on and had an examination de more, instead of contenting himself with making a proposition to that effect.

There is a turn her objection against receiving the depositions as examinations before the magistrate. They have undersone a very important alteration since they were taken by Justice Merrif, and now appear to be depositions in the Court of General Sessions. When all the Judges and Barons of England assembled on the trial of Lord Morley for murder, by his Peers, the fourth resolution which they adopted was, "that in case any of the wimbses which were It was thought important on the trial to prove that the

murder, by his Peers, the fourth resolution which they adopted was, "that in case any of the winnisses which were examined before the Coroner were dead or mabble to travel, and oath made thereof, that then the exactinations of such wincesses, so dead or mabble to travel, might, be read, the Coroner first making oath that such exacting to the same which he task upon oath, without any addition or alteration whatsoever." (K-lyng's R-p. 53-55) And Hawkins says, the deposition is admissible "if it be made out by oath to the satisfaction of the Court that the examination offered in evidence is the very same that was sworn before Camper or Justice, without any alteration whatsoever."

says, the deposition is admissible. In 15 or same out by each to the satisfaction of the Court that the examination offered in evidence is the very same that was sworn before the Cooner or Justice, without any alteration whatsoever. It shaws, they fire wood [522, 3+51] and to the same effect is I thin Gr. L. 71. Bellinger with the People, 8 Wiebd. 599, per Sutherland, J. It is impossible to a vite these are the anne depositions which were taken before the magistrate, without addition or alteration.

The objection is presented in another and a more conclusive form. The principal deposition when offered on the rist purported to be a deposition in the court of "General sessions of the peace in and fire the city and county of New York," and to have been taken pursuant to an order of that court. And although the defendant excepted to the evidence, the District Autorney was permitted to prove by parol that it was a deposition taken before the committing magistrate. The case comes plainly within the general rule that a written document shall not be contradicted or impeached a parol evidence. And besides, there are decisions going to the precise point under consideration. The prisoner is to be extrained without being sworn. In the King v. Shaith Stark Rep. 242, the examination of the decision was made in Rex v. Rivers, 7 C. & P. and 67, the written examination of the prisoner stated that he had answered, "I lectine to say any thing," and Lord Abinger would not allow the prosecutor to prove that the prisoner had made a confession of his guilt when under examination, before the magistrate. After these papers had been unread into depositions in the court of General Sessions, they could only be used for what they were worth as depositions taken in that court. They could not be reformed by parol evidence into depositions before the committing migistrate. In every view which I have been able to take of the case, the depositions were improperly admitted. iew which I have been able to take of the case, the depos

tions were improperly admitted.

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